**Opryland Hotel *and* United Food & Commercial Workers, Local #405, AFL–CIO.** Cases 26–CA–16610, 26–CA–16668, and 26–CA–17046

May 15, 1997

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On July 12, 1996, Administrative Law Judge Robert C. Batson issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply memorandum. The General Counsel also filed exceptions and a supporting memorandum to which the Respondent filed a response.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions,[3] as modified below, and to adopt the recommended Order, as modified and set forth in full below.[4]

The General Counsel excepts to the judge's failure to find that the Respondent violated Section 8(a)(3) and (1) by denying the January 1995 requests of employees Patti Barton and Linda Pennington to change their work schedules. The General Counsel argues that he presented a prima facie case that Pennington and Barton were unlawfully denied transfers from "on-call" to regularly scheduled positions because of their union activities and, further, that the Respondent failed to rebut this case. We agree. As set forth below, we find that the General Counsel established a compelling prima facie case based on the facts that: (1) Pennington and Barton were open union adherents; (2) the Respondent knew of their union support; (3) the Respondent demonstrated antiunion animus; (4) there were regularly scheduled banquet server positions available; and (5) Pennington and Barton were denied transfers to these positions. We further find that the Respondent failed to establish that it would have rejected Pennington's and Barton's schedule-change requests even in the absence of their protected, union activities.

Initially, we note that the Union began organizing the Respondent's employees in December 1994. In early January 1995, in response to job postings, Pennington and Barton applied to return from on-call sta-

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

For the reasons stated by the judge, we deny the Respondent's motion to reopen the record to determine the scope of the Regional Director's investigation of the unfair labor practice charges before issuance of the consolidated complaint.

[2] In sec. II,B, of his decision the judge stated that the Respondent violated Sec. 8(a)(3) and (1) by issuing a written warning to Frank Garramone on January 12, 1995. Although the warning issued Garramone was oral and not written, we agree with the judge that this discipline violated the Act.

[3] In his conclusions of law, the judge inadvertently failed to conclude, consistent with his analysis, that the Respondent violated Sec. 8(a)(1) by surveillance of its employees and creating the impression of surveillance. Accordingly, we add the following as par. 2,(a),(1) to those conclusions:

> (1) By engaging in surveillance of its employees because of their union activities, and by creating the impression of surveillance, and by recording the numbers of employees accepting union literature and videotaping union representatives handbilling its employees.

We adopt the judge's finding that employee Frank Garramone is entitled to reinstatement notwithstanding his secret tape recording of conversations at work. Thus where, as here, an employee is unlawfully discharged, reinstatement and backpay are appropriate remedies unless the employer can show subsequent acts (or discovery of the same) which would have resulted in a lawful discharge. The Respondent has not met this burden as to Garramone. The Respondent has no rule, prohibition, or practice against employees using or possessing tape recorders at work. Cf. *John Cuneo, Inc.*, 298 NLRB 856, 856–857 (1990); *Marshall Durbin Poultry*, 310 NLRB 68 (1993), enfd. in relevant part 39 F.3d 1312 (5th Cir. 1994). And, in the absence of such rule, practice, or prohibition, we do not find—as does our colleague—that such possession or use constitutes misconduct that would defeat reinstatement. In our view, Garramone's conduct was not *malum in se*.

Chairman Gould is of the view that an employer need not have a rule specifically prohibiting certain misconduct, such as the possession or use of tape recorders at work in issue here, in order to hold an employee accountable for such misconduct after it is discovered. To the extent that the cases cited by the majority can be said to hold to such a view, Chairman Gould would overrule them. Under the circumstances here, while reinstatement may be appropriate, Chairman Gould finds that backpay from the time that the employer became aware of the use of secret taperecording is not. In his view it is not consistent with the policies of the Act or public policy generally to reward such parties who engage in such conduct. See generally, *ABF Freight System v. NLRB*, 114 S.Ct. 835 (1994); *McKennon v. Nashville Banner Publishing Co.*, 115 S.Ct. 879 (1995): "The beginning point . . . [is the] . . . formulation of a remedy [which would calculate] . . . backpay from the date of the unlawful discharge to the date the new information was discovered. In determining the appropriate order for relief, the court can consider taking into further account extraordinary equitable circumstances that affect the legitimate interests of either party." Id. at 886.

In adopting the judge's finding that the Respondent unlawfully videotaped employees who were engaged in protected activity, we note that the Respondent relies solely on the contention that it was not responsible for the actions of the person doing the videotaping. We note, however, that the Respondent's security guard permitted the open videotaping to occur. Further, the guard also permitted the videotaper to have repeated and unencumbered access to the employee parking lot. In these circumstances, employees reasonably could believe that the Respondent, through its security guards, acquiesced in the videotaping and that the videotaping was conducted under authority from the Respondent. Member Fox would not find that the General Counsel proved by a preponderance of the evidence that the actions of the unknown videotaper were attributable to the Respondent and thus would not find the videotaping violation.

[4] We modify the judge's proposed Order and attach a new notice to comport with the judge's findings and conclusions, as modified herein.

tus to, respectively, regular full-time and part-time banquet server schedules.[5] At the time of these requests, Barton and Pennington had each worked for the Respondent for about 10 years. During their employment, both employees had switched between on-call and regular schedule banquet serving work.

Before acting on their requests, the Respondent learned that Pennington and Barton were active union adherents. On or before January 14, the Respondent discovered that Pennington was an open union supporter when she distributed union authorization cards to fellow employees. Indeed, on January 15, the Respondent issued Pennington a written warning for this distribution, which warning was premised on its invalid and disparately enforced no-solicitation rule.[6] Further, according to Pennington's uncontradicted testimony, when Pennington asked Banquet Manager Marinus Schott whether the warning would jeopardize her chance to return to the regular schedule, Schott replied that it would.

The Respondent similarly learned that Barton supported the Union. During the Respondent's January 16 employee meeting, Barton openly disagreed with the assertion of the Respondent's attorney that a union was not necessary and publicly urged her coworkers to join her in speaking out about work problems.

Next, while Pennington's and Barton's requests were pending, the Respondent demonstrated antiunion animus. In addition to issuing Pennington the unlawful warning on January 15, the Respondent republished its unlawful no-solicitation rule in a January 1995 employee newsletter. It also unlawfully disciplined employee Garramone on January 12 for allegedly violating the no-solicitation rule, informed Garramone that he could not solicit for the Union on breaktime, and told Garramone that he could discuss football or any other subject of personal interest while waiting to work, except the Union. Following this unlawful activity, the Respondent's banquet manager, Tim Pendergrass, notified Pennington and Barton in late January that their requests were denied because they had changed their schedule status too many times.[7]

Finally, we find that the Respondent failed to establish that it would have denied Pennington's and Barton's January 1995 schedule-change requests even in the absence of their union support and activities.[8] Between January and March 1995, the Respondent placed approximately 26 employees into regular-schedule banquet server positions. There is no explanation why these employees were awarded the positions ahead of long-time employees Pennington and Barton.[9] Further, we reject the Respondent's argument that Pennington and Barton were validly denied transfers because they too frequently switched between on-call and regular schedules. As stated above, both employees had been permitted to transfer among shifts before the advent of the Union. Further, uncontradicted record evidence shows that other banquet servers similarly were permitted to switch their schedules. Indeed, during the period of Pennington's and Barton's request, the Respondent approved employee Krantz' bid to move from on-call to regularly scheduled banquet server work.[10]

In these circumstances we find, contrary to the judge, that the Respondent violated Section 8(a)(3) and (1) by denying Pennington's and Barton's January 1995 schedule change requests.[11]

## AMENDED REMEDY

In addition to those remedies specified by the judge, the Respondent shall be required, within 14 days from the date of this Order, to offer Linda Pennington a full-time banquet server position or, if that position no longer exists, a substantially equivalent position without prejudice to her seniority and any other rights and privileges previously enjoyed. The Respondent shall also make Pennington and Patti Barton whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the

[5] In sec. II,C, par. 3, of his decision, the judge incorrectly identified the schedules that employees Pennington and Barton sought in January 1995.

[6] We agree with the judge that this written warning violated Sec. 8(a)(3).

[7] Significantly, neither Pendergrass nor Schott testified at the hearing.

[8] In March 1995, Barton again applied to return to the regular, part-time schedule. In April—after the issuance of the complaint alleging that it violated Sec. 8(a)(3) by denying the transfer requests—the Respondent placed Barton on the part-time schedule. Pennington remains on on-call status.

[9] We find that the judge improperly placed on the General Counsel the burden of establishing that, in the absence of discrimination, Pennington and Barton would have received transfers instead of the 26 employees actually awarded them. On the contrary, once the General Counsel established his prima facie case, it was incumbent on the Respondent to establish that it nonetheless lawfully would have selected other applicants for the positions instead of Pennington and Barton. The Respondent did not satisfy this burden.

[10] Krantz testified that she had switched from on-call to part-time status at least three times during her 3 years of employment with the Respondent.

[11] We adopt, however, the judge's finding that the Respondent did not violate Sec. 8(a)(3) by reducing both employees' hours in January and February 1995. In so doing we note particularly that the records relied on by the General Counsel do not support his claim that their hours were in fact reduced.

Respondent, Opryland Hotel, Nashville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Publishing, maintaining, republishing, or enforcing the invalid no-solicitation/distribution rule published in its employee handbook requiring the permission of management in order to solicit for any purpose on company property.

(b) Announcing and enforcing overly broad "no talking" rules prohibiting employees from discussing the Union at work while permitting all other discussions.

(c) Disciplining employees in any manner for engaging in protected concerted or union activity in violation of the above-referenced rules.

(d) Discharging its employees for engaging in union and/or other protected concerted activity.

(e) Engaging in surveillance of its employees because they engaged in union activities, or creating the impression of surveillance, by recording the number of employees accepting union literature and/or videotaping union representatives handbilling its employees.

(f) Refusing to grant employees requested work schedule transfers because of their union activities.

(g) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.[12]

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind, revoke, and cease enforcing the no-solicitation/distribution rule published in its employee handbook and other places and thereafter notify its employees in writing that it has done so.

(b) Rescind the rule prohibiting employees from discussing the Union at work while permitting all other discussions.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings given Frank Garramone, Linda Pennington, and Boyd Reynolds and, within 3 days thereafter, notify each of them in writing that this has been done and that it will not use the warnings against them in any way.

(d) Within 14 days from the date of this Order, offer Frank Garramone full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Garramone, and within 3 days thereafter notify Frank Garramone in writing that this has been done and that the discharge will not be used against him in any way.

(f) Within 14 days from the date of this Order, offer Linda Pennington a transfer to a full-time banquet server position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges she previously enjoyed.

(g) Make Frank Garramone, Linda Pennington, and Patti Barton whole for any loss of earnings or other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of both the Board's and judge's decisions.

(h) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facility in Nashville, Tennessee, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 20, 1995.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[12] The judge included "broad" order language in his recommended Order. No party sought this relief, nor do we find that the circumstances of this case warrant its imposition. Accordingly, we have substituted the customary "narrow" order language.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT publish, maintain, republish, or enforce any no-solicitation/distribution rule requiring our employees to obtain permission from management to solicit or distribute materials on company property when on their own time.

WE WILL NOT prohibit employees from discussing the Union during worktime while permitting all other discussions.

WE WILL NOT engage in surveillance of our employees because of their union activities, or give the impression of surveillance and WE WILL NOT videotape them or maintain a list of the employees who accepted union literature.

WE WILL NOT issue written or oral warnings to our employees for engaging in union or protected concerted activity.

WE WILL NOT discharge, discipline, or otherwise discriminate against any of you for supporting United Food & Commercial Workers, Local #405, AFL–CIO, or any other union.

WE WILL NOT deny any of you transfers to other work schedules or otherwise discriminate against you for supporting United Food & Commercial Workers, Local #405, or any other union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind, revoke, and cease enforcing the no-solicitation/distribution rule published in our employee handbook and other places and will thereafter notify you in writing that we have done so.

WE WILL rescind the rule prohibiting employees from discussing the Union at work while permitting all other discussions.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the warnings given employees Frank Garramone, Linda Pennington, and Boyd Reynolds and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the warnings will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, offer Frank Garramone full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the discharge of Frank Garramone and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

WE WILL, within 14 days from the date of the Board's Order, offer Linda Pennington a transfer to a full-time banquet server position or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Frank Garramone, Linda Pennington, and Patti Barton whole for any loss of earnings and other benefits resulting from the discrimination against them, less any net interim earnings, plus interest.

## OPRYLAND HOTEL

*Jane Vandeventer, Esq.*,[1] for the General Counsel.
*Arch Stokes, Esq.* and *Robert I. Murphy, Esq. (Stokes & Murphy)*, of Atlanta, Georgia, for the Respondent.
*Joe Ellis* and *Jeff Francis*, UF&CW, Local 1995, of Nashville, Tennessee, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

ROBERT C. BATSON, Administrative Law Judge. Opryland Hotel (the Respondent) operates a luxury hotel and convention center at Nashville, Tennessee, adjacent to the Opryland Theme Park, The Grand Ole Opry, and other attractions and has approximately 3000 employees. Since in or about December 1994, United Food and Commercial Workers, Local #405, AFL–CIO (the Union) has been conducting an organizing drive among Respondent's employees. This case arises out of issues raised upon charges filed by the Union in Case 26–CA–16610 on January 20, 1995,[2] and amended on March 15, and the charge in Case 26–CA–16668, filed on March 15, and amended on April 11, and the charge filed in Case 26–CA–17046 on September 19. All charges were timely served upon Respondent. The Acting Regional Director for Region 26 (Memphis, Tennessee) on October 13, issued a second order consolidating cases and consolidated complaint and notice of hearing, the operative complaint herein, alleging that Respondent had violated Section 8(a)(1) and (3) of

[1] Herein the General Counsel.
[2] All dates herein are 1995 unless otherwise indicated.

the National Labor Relations Act (the NLRA or the Act). The complaint alleges that since about July 30, 1994, Respondent issued it's employees handbooks containing an overly broad and unlawful no-solicitation/distribution rule and in its newsletter "Spread the Word," reissuing it in violation of Section 8(a)(1) of the Act. The complaint further alleges that Respondent issued written warnings to employees Frank Garramone, Linda Pennington, and Boyd Reynolds and discharged Frank Garramone for violating the above unlawful solicitation and distribution rule. The complaint also alleges that on February 2 and, on three occasions on February 15, Respondent's security guards engaged in unlawful surveillance of its employees union activities, once by videotaping such activities. Also alleged is that about January 1, Respondent refused to convert Patti Barton and Linda Pennington to full-time status and at the same time reduced the working hours of the same employees and finally it is alleged that about January 12 it announced a discriminatory rule prohibiting its employees from talking about the Union.

The complaint alleges, Respondent admits, and the evidence establishes that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

All parties were afforded the opportunity to present evidence, to call and examine and cross-examine witnesses, and to file posttrial briefs. Briefs were filed by the Respondent and the General Counsel and have been duly considered.

On the entire record and from my observation of the demeanor of witnesses testifying under oath, I make the following

## FINDINGS OF FACT

### I. RESPONDENT'S PRELIMINARY MOTION

In a pretrial conference telephone call with all parties, the Respondent objected to going to trial on the basis of the operative complaint here contending that the Regional Director, or Acting Regional Director, had not conducted a thorough investigation of the charges or afforded the Respondent a reasonable opportunity to supply evidence in answer to the charges prior to issuing the complaint here as required by the Board's Rules and Regulations and Statements of Procedure. Respondent's counsel stated that he was going to seek a restraining order from the U.S. District Court for the Western District of Tennessee to prevent the General Counsel and the Board from going forward with the trial. On Friday before the Monday hearing counsel did seek such an order from U.S. District Judge McCalla. The motion was denied and counsel was advised that he could appeal to U.S. Sixth Circuit Court of Appeals. Counsel further avers that Judge McCalla "specifically said that it would be for the National Labor Relations Board's administrative law judge to make the determination other than the District Court and the motion should be made to the administrative law judge at the hearing." (Tr. 1–24.)

Counsel made a motion to me in effect to defer the hearing in this matter and remand back to the Regional Director, apparently, with instructions to further investigate the case and give Respondent an opportunity to present all evidence it wished. I was compelled to deny the motion in as much as I have no jurisdiction over the extent of the investigation by the Region. Section 101.4 of Board's Statements of Procedure is quite clear stating in part:

> The Regional Director may exercise discretion to dispense with any portion of the investigation described in this section as appears necessary in consideration of such factors as the amount of time necessary to complete a full investigation, the nature of the proceeding, and the public interest. After investigation, the case may be disposed of through informal methods such as withdrawal, dismissal, or settlement; or the case may necessitate formal methods of disposition.

Thus, the Regional Director has extremely broad authority to determine the extent of the investigation into any unfair labor practice charge.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *Respondent's No-Solicitation/Distribution Rule*

Several complaint allegations are based on the promulgation and maintenance of the following rule regulating solicitations and distributions.

Since about July 30, 1994, Respondent, by issuing its employee handbook and by issuing a "Policy Reminder" in its January 13, 1995 newsletter "Spread the Word," has promulgated and maintained the following rule:

> The solicitation, circulation of petitions, distribution or posting of any material and the collection of money at the Hotel are strictly prohibited without prior approval of the Hotel manager. The only exception to this rule is the annual United Way campaign.
>
> You may conduct any approved solicitation, circulation or distribution before work, during breaks or after work, but not during working hours or in work areas.

It is stipulated that the above-quoted rule has been in effect since at least July 1994 and that after the commencement of the organizing drive Respondent repromulgated the rule in its employee newsletter, "Spread the Word" in the January 13 edition which was available to all employees (G.C. Exh. 5, Tr. 194).

The General Counsel contends the above-quoted rule is presumptively invalid in that it requires the approval of the hotel manager for any solicitation or distribution of literature or any other matter if done on hotel property even before work or during breaks or after work. The Respondent argues that the General Counsel has not clarified on what grounds the no-solicitation rule is presumptively invalid since the rule does not prohibit union solicitation per se and does not specifically include unions within its provisions. The law is well settled that a no-solicitation/distribution rule need not specify union activity as that activity which is prohibited if the rule is overly broad and unlawful on its face and is enforced for union solicitation while other solicitations are permitted.

The Respondent further contends that it might show by extrinsic evidence that despite the overly broad language in a no-solicitation/distribution rule the rule was not strictly enforced and employees understood that breaktime was their own time and that it did not require management approval for solicitation and distribution notwithstanding the language of the rule. It cites only Patricia Wright's testimony that it

was obvious that extensive union solicitation occurred on the premises and no one ever sought her permission to do so.

While this may be true in some cases, the Respondent has failed to establish by extrinsic evidence that the rule was not enforced as to union solicitation as it was written and promulgated. For instance, the employee warning given Linda Pennington on January 14, 1995, cites the current employee handbook page 4.23 (G.C. Exh. 3):

> "Solicitation, circulation of petitions, the distribution or posting of any material, and the collection of money at the Hotel are strictly prohibited without prior approval of the hotel Manager." The Book further states that you may conduct any *approved* solicitation, but not during work hours or in work areas. Please understand that any further violation will result in disciplinary actions up to and including termination.
>
> ACTION TAKEN
>
> CONSULTATION *Written 1st*

It is noted that "*approved*" solicitation is emphasized by italics. Pennington refused to sign the warning contending that she was on her 15-minute break at the time. It is further noted that the employee warning given Boyd Reynolds on March 7, 1995, alludes to the rule in the employee handbook. (G.C. Exh. 9.)

About January 12, Laurie Hurley testified that employee Lee Douglas, apparently a reservation clerk, reported to her that on two occasions Frank Garramone had invited him to come to union meetings while he was working. Hurley testified that Lee indicated that this interfered with his work. Lee was not called to testify. For this incident, Garramone was counseled by Hurley for soliciting for the Union the first step of Respondent's disciplinary procedure. Bell Department Head Michael Nalley was also present and alluded to Respondent's no-solicitation rule and that Garramone could be further disciplined if he did so again. At this same meeting Nalley also advised Garramone that he could not solicit or even talk about the Union on breaktime, presumably because he was being paid, but could do so during his 30-minute lunch period. On inquiry by Garramone about the bellman talking about different subjects while standing in line waiting for the next assignment (called standing on the wall), Nalley told him they were permitted to talk about football or any other subject of personal interest, except the Union. Subsequently, Nalley had his assistant bell department manager advise Garramone that Nalley had been mistaken about soliciting for the Union during break and that they could do so.

However, Garramone was subsequently terminated for talking about the Union with a valet attendant while they were "standing on the wall." On March 7, Security Supervisor Phil Thompson was walking through the Cascades Lobby and testified that as he passed within about 3 feet of Garramone and Reynolds, a valet attendant, he heard the bellman who wore a name tag "Frank" say the words "Union power in the sense of 3,000 people strong saying we're going to walk." A short time later while on break in the breakroom Garramone and Reynolds passed a card back and forth that looked like a union card. On March 9, Garramone was terminated by Patricia Wright with admitted reliance on the January 12 "counseling" as having a prior infraction. At the time Thompson overheard Garramone's remarks quoted above, he was dressed as a guest of the hotel and there was no indication that he was a security personnel.

The Respondent has what it calls the "Five Foot/Ten Foot" rule which it contends requires an employee to stop what he or she is doing and focus on a guest who comes within 10 feet, and then go greet the guests and affirmatively offer assistance when the guest comes within 5 feet. Respondent emphasizes the failure of Garramone and Reynolds to abide by this rule as one of an egregious nature. Moreover, Respondent asserts that had Thompson, the security guard, been a real guest his overhearing Garramone's isolated remarks might have cost it a million-dollar convention, since it would not be likely that a company would choose a convention site if there was a possibility of a strike. I have grave doubts that a real guest would have been paying attention to what two bellmen were saying to each other and whether he would have inferred the comment to relate to the Hotel.

The record contains overwhelming uncontradicted evidence that it did not apply its no-solicitation rule consistently to nonunion solicitations. The evidence shows that there were numerous solicitations for money by employees to sports pools (see G.C. Exh. 8) sales for charity, schools, Girl Scout fund-raisers, and even for personal profit, specifically the record is replete with testimony of Pennington, Garramone, and most notably Bryant that there was widespread open solicitations many of which were participated in by supervisors. (Tr. 79–82, 393–406, 457, 462, and 586–655, and G.C. Exh. 8.) There is also abundant evidence that at the commencement of the union organizing activity Respondent began to more stringently enforce the no-solicitation/distribution rule.

Both the General Counsel and Respondent cite many of the same cases as precedent for their position. I find most of the General Counsel's citations are applicable to this case. For instance:

> The Board's lead case dealing with no-solicitation rules is *Our Way, Inc.*, 268 NLRB 394 (1983), recently followed in *Laidlaw Transit, Inc.*, 315 NLRB 79 (1994). Briefly, a no-solicitation rule is unlawful if it unduly restricts the organization activities of employees during periods and in places where these activities do not interfere with the employer's operations. For example, rules which prohibit employees' union activities, including solicitation to sign union authorization cards, on break times or meal times are overly restrictive of employees' Section 7 rights to self-organization, and are unlawful. Rules which require employees to get prior approval from the employer for solicitations are also overly restrictive of employee rights, and are unlawful. *Baldor Electric Co.*, 245 NLRB 614 (1979).
>
> Any disciplinary action taken pursuant to an unlawful no-solicitation rule is likewise unlawful, analogous to the "fruit-of-the-poisonous-tree" metaphor often used in criminal law. *NLRB v. McCullough Environmental Services, Inc.*, 5 F.3d 923 (5th Cir. 1993), 144 LRRM 2626, 2632, footnote 9. Such discipline violates both Section 8(a)(1) and 8(a)(3). *Circuit-Wise, Inc.*, 306 NLRB 766, footnote 3 (1992).
>
> Where an employer maintains a no-solicitation rule which is valid, i.e., which does not unlawfully restrict employees' Section 7 activities, it must be applied uni-

formly, not sporadically, not springing up only when union activities begin, and not singling out union activities only for enforcement. *Cannondale Corp.*, 310 NLRB 845 (1993); *Cumberland Farms*, 307 NLRB 1479 (1992); *Willamette Industries, Inc.*, 306 NLRB 1010 (1992).

Similarly, where an employer imposes a restriction on employee's conversations, it violates Section 8(a)(1) of the Act the talking restriction applies only to union-related talk. See, e.g., *Teksid Aluminum Foundry, Inc.*, 311 NLRB 711, 713–714 (1993); *Willamette Industries, Inc.*, supra; *T & T Machine Co., Inc.*, 278 NLRB 970 (1986); *Orval Kent Food Co., Inc.*, 278 NLRB 402, 405 (1986); *Cerock Wire & Cable Group, Inc.*, 278 NLRB 888, 897 (1985).

On the foregoing, I find the Respondent's no-solicitation/distribution rule overly broad and restrictive so as to interfere with employees Section 7 rights. Moreover, had that rule been valid it was discriminatorily enforced against union solicitation and distribution and thus violates Section 8(a)(1) of the Act.

### B. *Warnings and Disciplinary Action Taken Pursuant to the Rule*

Having found that Respondent's no-solicitation/distribution rule set forth above and the disparate application of that rule violates Section 8(a)(1) of the Act. I find that the written employee warnings given to Frank Garramone on January 12, Linda Pennington on January 15, and Boyd Reynolds on March 9, pursuant to the invalid that rule violates Section 8(a)(1) and (3) of the Act. The Respondent shall be ordered to cease and desist from such acts and to expunge from all its records any evidence of this action.

I further find, as more fully set forth below, that the discharge of Frank Garramone pursuant to that rule and the "No talk about the Union rule" violates Section 8(a)(1) and (3) of the Act and I shall order appropriate remedial action.

### C. *The Alleged Refusal to Convert Linda Pennington and Patti Barton to Full-Time and Part-Time Status and Reduction in Hours Worked*

Around mid-January the Respondent learned of Linda Pennington's union sentiments when it issued an employee warning to her for passing out union cards. At about the same time it became aware of Patti Barton's prounion sympathies when she outspokenly disagreed with Respondent's counsel, Arch Stokes, at a large employee meeting and appealed to other employees to publicly agree with her remarks. Both Pennington and Barton had been employed as banquet servers by Respondent for about 10 years. The Respondent has three categories of banquet servers. Full-time employees who must be able to work any shift and work at least 30 hours a week; part-time are servers who are unable, or do not wish, to work certain shifts and on-call servers who work when and if they so desire. Some on-call servers may be registered at more than one hotel. An on-call server may also call the banquet manager and advise that she or he is available at given times. The Respondent does not distinguish between regular full time and regular part-time as both categories have the same job number.

In the 10 years of their employment with Respondent each had gone from on-call to regular part-time several times and, as Pennington testified, a server had to work her way up to full time. Both Pennington and Barton had gone up and down the latter several times at their own request. In early January Pennington, who had been on on-call status for several months requested to go back to regular full time. At about the same time Barton who had been in an on-call status for several months because of her husband's work schedule, requested to go back to regular part-time status.

Some 10 days later both Pennington and Barton were told by Banquet Manager Tim Pendergrass that their request to go to regular part-time and full time respectively were rejected. Barton was told that her request was not granted because of her "yo-yo" performance in the past. That is frequently going from one status to another. However, in April Barton was, as she requested, placed on regular part-time status. The record does not reflect what, if any, reason was given to Pennington for its failure to place her in full-time status, although in brief Respondent states that she also was refused full-time employment because of her "yo-yo" record.

In footnote 3 of her brief, the General Counsel names approximately 26 employees whose names appeared on the regularly scheduled payroll for the first time during the late January-March period. She appears to argue that this is evidence that Respondent had jobs available during that period which could have been given to Pennington and Barton. This fact does not necessarily support this argument since there is no evidence as to when these employees requested to be placed in those categories or any other circumstances which might account for their being placed ahead of Pennington and Barton.

At the time of the hearing Barton was working regular part-time as she requested. According to Respondent it still considered Pennington to be an on-call server, although she had been called on eight times in January and February and had not responded. In February her telephone number changed and she failed to notify Respondent and could not be called. At the hearing she gave her occupation as a data computer operator and testified that she was an on-call banquet server at another hotel.

The General Counsel relies on Respondent's Exhibit 4 and General Counsel's Exhibit 11 to demonstrate that Barton and Pennington's hours were reduced in February and March. These exhibits do not sustain that conclusion. Respondent's Exhibit 4 is a chart comparing Barton and Pennington's hours worked to those of all banquet servers including full time and regular part-time for each pay period from January 7 through September 16. General Counsel's Exhibit 11 merely sets forth the average number of hours regularly scheduled banquet servers worked each pay period in February and March.

Notwithstanding Respondent's demonstrated union animus and other unfair labor practices. I find on these facts the General Counsel has failed to prove by a preponderance of credible evidence that Respondent reduced the working hours of Barton and Pennington and refused to grant their request to go from on-call to regular full or part-time because of their union or other protected concerted activity.

D. *Surveillance of Union Activities*

The facts giving rise to this allegation are not in dispute. Indeed they are by and large admitted by Respondent and those facts not admitted are not denied. The complaint alleges that on February 2 Respondent engaged in surveillance of the activities of employee Patti Barton after sending her home early from the ice cream shop where she was working that day. Barton testified that a supervisor, named Crystal, came into the shop and asked if another employee named "Peggy" was working there. Crystal went to the back room and came back and in the presence of Barton and muttered "oh its that union business." Crystal then left the shop. The shop manager asked for volunteers to go home early because business was slow. When no one volunteered, Manager Loy Carney instructed Barton to go home. The record does not disclose whether others were also sent home. Barton testified that she changed clothes and stopped by the employee cafeteria for a drink. A security guard approached her after about 10 minutes and insisted on escorting her off the premises and onto the employee bus to the parking lot. She testified that Respondent's rules permit employees to remain in the cafeteria for 30 minutes after their shift ends, but that rule is rarely enforced and employees frequently remain for up to 2-1/2 hours to eat and talk with each other. Barton's testimony regarding this entire episode is not contradicted. No reason was given to Barton by the security guard for insisting that she leave the premises immediately. I believe an inference is warranted that it was because she was an outspoken union advocate and Respondent did not want her conversing with other employees. Accordingly, I find the security guard was engaged in unlawful surveillance of Barton because of her union activity.

The complaint alleges three separate instances of surveillance by Respondent's security guards on September 15, one by videotaping union representatives handbilling at the entrance to the employee parking lot. Again there is no issue of fact. On September 15, three union representatives, Joe Ellis, Terrell Holt, and Ralph Dunmire distributed union handbills at the entrance to the employee parking lot for most of the day. Several hundred cars a day come into and leave this employee parking lot. There is a glass-enclosed guard booth some 20 to 30 feet inside the lot which is occupied at all times by one of Respondent's security guards, called rangers. It is admitted by Respondent that each time an employee accepted a union handbill the guard wrote something on a paper attached to a clipboard; when an employee did not accept a handbill the guard did not write anything. The 6 a.m. to 2 p.m. guard stood inside the glass booth, but it was clearly visible that he wrote something each time an employee accepted a handbill. The guard who relieved him at 2 p.m. stood outside the booth with a clipboard and made her notations. The afternoon guard testified that she had been instructed to count the number of employee who accepted the handbills but denied that she noted their identity or auto tag number.

Patti Barton testified without contradiction that when she left work at about 10 a.m. on September 15, and arrived at the employee parking lot still wearing her pin-striped uniform, she observed Union Representative Joe Ellis and two other union representatives passing out union material at the entrance to the parking lot. As she passed her car Barton threw her purse which contained her employee identification into it and proceeded to the entrance where the union representatives were handbilling. She talked with Joe Ellis a few moments and obtained some union authorization cards to distribute to other employees. As she was returning to her car the security guard at the street entrance stopped her and asked for her identification. She, of course, did not have it on her person at that time having just put her purse in her car. It appears she was never out of sight of the guard while she was talking to Ellis. Barton told him it was in her car and continued to walk toward the car and found that a second security guard appeared to have blocked her car with a van. Nevertheless, Barton obtained her identification and showed it to the guard who made a notation of the number. She was then permitted to leave the parking lot.

The security guard that came on shift for the afternoon testified that she was told by the security guard she was relieving that Patti Barton had received a "write-up" earlier that day, apparently for not having her identification on her person.

The Respondent admits that it instructed its security guards to make notation of the number of employers who accepted the handbills from the union representation, but denies that they were instructed to note the identity of the employees or the license plate numbers of the vehicle. It is not denied that the guard on duty from 6 a.m. to 2 p.m. stayed inside the glass enclosed booth but was still clearly visible to the employee that he was making some kind of notes when employees accepted the handbills. The guard who came on duty at 2 p.m. stood outside the booth with a clipboard and was even more visible. Marica Finch admitted that she was instructed to count the employees who accepted handbills.

Union Representative Terrell Holt testified that about mid-afternoon of the same day, September 15, he observed a man who had driven in and out of the parking lot that day several times, was parked a short distance away blatantly taking video footage of the union representatives and the employees as they came through the entrance. After a few moments of videotaping from that distance, the individual drove closer and got out of the car and for about 5 minutes videotaped the union representative passing out leaflets to employees. He then returned to the car and drove back into the employee parking lot and was not stopped or questioned by the guard.

The Respondent correctly argues that when a union or employee union adherents elects to conduct union activity on or near the employees' premises, management does not have to hide to avoid observing such activities. Citing *Metal Industries*, 251 NLRB 1523 (1980). It further argues that it is well settled that management officials may observe public union activity without violating Section 8(a)(1) of the Act unless such officials do something out of the ordinary. *The Broadway*, 267 NLRB 385, 400 (1983).

The General Counsel contends that the security guard at the employee parking lot entrance did something out of the ordinary by writing something on a clipboard each time an employee accepted a union handbill. The employees had no way of knowing whether their names, auto license number, or what was being written.

She further argues that surveillance of employees because of their union activities is coercive of employees and violates Section 8(a)(1) of the Act. *Trump Plaza Hotel & Casino*, 310 NLRB 1162, 1168 (1993). Where this surveillance is of all employees who may be engaging in union activities, such as

accepting a union handbill, and goes beyond the normal actions and normal security concerns of an employer, it will be deemed by the Board to be coercive and violative of the Act. *Days Inn Management Co.*, 306 NLRB 92 (1992). In *Guille Steel Products Co.*, 303 NLRB 537 (1991), an employer's surveillance of union handbilling of employees was found to be unlawful where the watchers wrote on clipboards as they watched the handbilling. Videotaping or photographing the employees accepting handbills has also been found to be unlawful surveillance of employees' union activities. *F. W. Woolworth Co.*, 310 NLRB 1197 (1993).

I find merit to the General Counsel's argument and find that the surveillance and impression of surveillance here violated Section 8(a)(1) of the Act. This finding includes the checking of employees who accepted the union literature.

### E. *Prohibiting Union Talk*

On January 12, while Frank Garramone was in Hurley's office receiving the counseling or warning from Hurley and Nalley for inviting Lee Douglas to a union meeting and at which time Nalley told them he could not solicit for the Union even on his breaktime. Nalley also told him, apparently pursuant to Garramone's questions, that he could not talk about the Union while on the wall waiting to be called to assist guests. They told him he could talk with the other bellman waiting with him about football or any other subject of interest to them except the Union. It is well settled that where an employer imposes restrictions on employees' conversations it violates Section 8(a)(1) of the Act if the talking restrictions applies only to union-related talk. *Teksid Aluminum Foundry*, 311 NLRB 711 (1993); *Willamette Industries*, 306 NLRB 1010 (1992). Accordingly, where such restrictions not only apply to solicitation and distribution for the union but any mention or discussion whether pro or con for the union, Section 8(a)(1) is violated. Indeed, Frank Garramone was discharged for merely making a comment about the Union. Thus, the Respondent violated Section 8(a)(1) of the Act by prohibiting employees from talking about the Union while permitting talk on any other subject.

### F. *Discharge of Frank Garramone*

Frank Garramone had worked for Respondent 6 years and 10 months on the bell staff, the first few months as a valet parker and then as a bellman. This record reveals that he was a satisfactory if not an exemplary employee until he became active in the union organizing drive which started about December 1994. At the time of his discharge he worked the 7 a.m. to 3 p.m. shift under the immediate supervision of one of several bell captains and Michael Nalley, the department head, and Rex Holmes, assistant department head.

Garramone initiated the union activity at the Hotel in early December 1994 by contacting the director of IED of the AFL–CIO whose name was Doug Neehouse. Prior to this Garramone had collected about 30 names of employees to demonstrate that there was an interest. Neehouse introduced Garramone to Joe Ellis of the United Food and Commercial Workers, the Union Neehouse felt was best able to represent a unit of hotel employees. After that he attended most of the union meetings and assisted Joe Ellis in conducting them. Garramone was extremely articulate.

The Respondent became aware almost immediately of the union activity and there is no evidence the employees attempted to conceal their activity. About January 16, Respondent held three meetings with its employees at approximately 10 a.m., 3 and 11 p.m. in the presidential ballroom. There were 800–1000 employees at each meeting. Garramone testified that there were several managers present including Jack Vaughn, vice president of Gayland Entertainment, apparently Opryland's parent company, and a Rick Stanfield, and Respondent's attorney, Arch Stokes, all of whom spoke to the employees expressing strong opposition to the Union and then permitted employees to ask questions or speak. Respondent's attorney entered an ongoing objection to evidence relating to Garramone's extensive activity on behalf of the Union, stating that "everybody knew Frank Garramone was pro-Union."

There is essentially no dispute as to the facts leading up to Garramone's discharge. The Respondent argued that by his conduct one might conclude that he fired himself. In brief Respondent lists seven events or facts relating to Garramone's behavior which led to his discharge. They are:

> 1. In one of the busiest and most public areas of the hotel, Mr. Garramone talked openly with co-worker Wayne Boyd Reynolds about three thousand (3,000) Opryland employees walking off the job, while completely ignoring hotel rules for greeting guests (R. at 808–09, 872–73);
>
> 2. While both he and co-worker Lee Douglas were working, he interfered with Mr. Douglas' performing his duties (R. at 758–59, 865–66, 924–925 and R. Exh. 14);
>
> 3. He refused to cooperate with Director of Human Resources Patricia Wright's investigation by brazenly refusing to produce "evidence" he claimed to possess, by challenging, to "play his card." (R. at 470–71; 916);
>
> 4. He lied to Patricia Wright when he told her that he had not been previously warned that he could be terminated for his continued misconduct. (R. at 768–69, 885–86.);
>
> 5. He solicited housekeepers who were trying to work (R. at 424–426, 899);
>
> 6. He secretly taped discussions at work, which included Mike Nalley, Manager, Bell Services; Laura Hurley, Director of Rooms; his own immediate supervisor, Rex Holmes, Assistant Manager, Bell Services; and employees. He also secretly taped other employees at an all-employee meeting while at work (R. at 741–42, 744–45, 765, 802, 873–74, 899 and R. Exh. 12); and
>
> 7. Both he and the union had a clear understanding of what is prohibited. (R. at 376–377, 414, 537) Mr. Garramone, however, had "difficulty" with the concept of working time.

The Respondent contends that on January 12, a reservation clerk, Lee Douglas, reported to Rooms Division Manager Laura Hurley that Frank Garramone had approached him on two occasions and invited him to attend a union meeting. He indicated that he was working at the time, however, Hurley and Nalley did not obtain Garramone's version of the cir-

cumstance prior to issuing a warning for soliciting on company time. Garramone remembers Hurley's telling him that another warning could result in a suspension and states that he did not remember her adding "or termination." However, Hurley and Nalley remembered Hurley's telling him that another warning could result in suspension or termination. It is this that Respondent is referring to in item 4 when he asserts that Garramone lied to Patricia Wright when at the time of his discharge when he told her he had never been told that he could be terminated for further misconduct. I do not believe that Garramone was lying about that if it was said I believe that he simply did not hear it.

As noted above, the incident the Respondent seized on to fire Garramone occurred on March 7. Chief security officer for the Opryland Hotel, Phil Thompson, testified that he was in the Cascades' lobby[3] on the morning of March 7, dressed in jeans and a button-down shirt posing as a guest while carrying out his general responsibilities concerning safety, hospitality, and the well being of the guests and observe how they were greeted. The Respondent contends in brief that Thompson had also picked up an item he needed for work and was returning to "base."

Thompson testified that as he passed near, 3 or 4 feet, "the wall" where bellmen and valets were waiting to be called for guests' assistance he heard a bellman make a statement, "Union Power in the sense of 3,000 people strong saying we're going to walk." (Tr. 808–809.) At this, Thompson apparently looked to see who was talking. Although not recognizing Garramone he noted that it was a bellman wearing the name tag "Frank" talking to a valet who he found out was named Boyd Reynolds. The Respondent argues that they were so engrossed in the union talk neither Garramone nor Reynolds greeted him, which was in violation of the Respondent's alleged "Five Foot/Ten Foot" rule. Thompson did not testify as to whether there were other bellman or valets on the "wall," and if so whether some of them were closer to him than Garramone.

Thompson was so chagrined at what he had seen and heard that he reported the incident to Jim Henry, assistant manager of rooms, and was the manager on duty at the time. Evidently Henry reported it to Director of Human Resources Patricia Wright. She summoned Thompson and discussed his report with him. She also discussed the matter with Boyd Reynolds, she testified, and he admitted Garramone discussing 3000 people walking out. Reynolds was later given a warning for discussing nonwork related subjects on worktime.

On March 9, Wright summoned Garramone to her office where there was also Thompson, Reynolds, Nalley, and Michael McMahon, executive director of rooms. Wright told Garramone that, once again, he had engaged in nonwork activity on working time and told him the discussion he had with Reynolds about the walkout had been overheard and this was the second time he had been found engaging in nonwork activity when he was supposed to be working and that he had been warned by Laura Hurley on January 12, that he could be terminated for this type conduct. Garramone initially denied they had discussed termination, but only suspension. Nalley, who had been in the January meeting in Hurley's office intervened and said termination had in fact been discussed. Garramone agreed at that point but said he disagreed with Hurley's determination that a second offense should warrant termination. Wright then terminated Garramone and Nalley accompanied him to his locker. When Garramone opened his locker a tape recorder and several batteries fell out.

[3] The Cascades' lobby was described as probably the busiest area of the hotel. All guests apparently check in and out there and it is adjoined by or is the primary route to several restaurants, shops, and banquet or meeting rooms and is where the bellmen wait "on the wall" to be called by the bell captain to assist guests.

### Analysis of Garramone's discharge

From this record it appears that Garramone was at least a satisfactory, if not an exemplary, bellman for more than 6 years. It was not until he became the leading employee advocate for the Union that he began to have problems with Respondent's solicitation and distribution rule which I have herein found to be invalid inasmuch as it requires approval from management to solicit or distribute anything on company property during working hours and that it was interpreted by management to the employees to be applicable during breaktimes and other nonworking times when employees were on the premises.

The January 12 disciplinary action taken against Garramone was based on his purportedly inviting Douglas to a union meeting on two occasions. Douglas was not called to testify as to the circumstances of these alleged occurrences.

The second incident and the one for which he was terminated also violated an invalid rule with respect to talking about the Union. Garramone had been informed the bellmen could talk about any subject they desired except the Union while standing on the wall. This rule is presumptively invalid in that it permits talk on any subject except the Union. The statement allegedly made by Garramone does not constitute solicitation of type. Moreover, as I observed earlier, I have grave doubts that a guest overhearing the rather stilted and isolated statement would have automatically assumed it referred to the hotel employees.

Accordingly, I find Garramone's discharge was because of his lawful union activity and since it was well known that Garramone was the leading union adherent his discharge would have a chilling and coercive effect on other employees.

### Garramone's tape recordings

During the course of Garramone's testimony it was elicited that he had secretly tape-recorded conversations that he had with supervisors about the union including the January 12 meeting in Hurley's office at which he was disciplined for inviting Lee Douglas to union meeting. He had also recorded the January 16 meeting at which Respondent's counsel and several company officials spoke against the Union. He testified that he had recorded many other conversations and had played those relating to the Union to a union representatives and the NLRB agent.

After hearing this testimony Patricia Wright became very incensed and from the witness stand said that Garramone was fired again. She testified that tape recorders on Hotel property was forbidden and having one was a dischargeable offense. However, nowhere in the employee handbook is the

possession or use of tape recorders mentioned. Under the heading of dress code, the handbook states:

> Pagers (not issued by the Company), Cellular phones and walk-mans are not permitted on Hotel Property. (R Exh. 2, page 3.5 and 3.11)

Nowhere else in the handbook or any other rules admitted into evidence is there any indication that the possession or use of a tape recorder is a dischargeable offense or any other type of offense. Thus, no matter how despicable one might think the secret recording of a conversation might be the Respondent made no provision for such in its rules.

## CONCLUSIONS OF LAW

1. The Respondent, Opryland Hotel, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Food & Commercial Workers, Local #405, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

(1) By the following acts and conduct the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

(a) Respondent violated Section 8(a)(1) of the Act:

(2) By promulgating, maintaining, and enforcing a no-solicitation/distribution rule which required permission from management to engage in any solicitation or distribution on company property at any time and forbidding such during nonworktime and in nonwork areas.

(3) By announcing a rule prohibiting its employees from talking about the Union at any time.

(b) Respondent violated Section 8(a)(3) and (1) of the Act by:

(1) By issuing disciplinary warnings or counselings to employees Frank Garramone on January 12, 1995, Linda Pennington on January 15, 1995, and Boyd Reynolds on March 9, 1995, for violation of its invalid no-solicitation/distribution rule.

(2) By discharging its employee Frank Garramone on March 9, 1995.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having discriminatorily issued warnings to its employees Frank Garramone, Linda Pennington, and Boyd Reynolds, shall be ordered to rescind same and within 14 days remove all such warnings from all its files and notify within 3 days these employees that it has done so.

Having discriminatorily discharged employee Frank Garramone, the Respondent must within 14 days from the date of this Order offer him full reinstatement to his former job and make him whole for any loss of earnings and other benefits, complete on a quarterly basis from the date of discharge to date of proper offer of reinstatement less any interim earning as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

[Recommended Order omitted from publication.]